IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1057 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMIBEN W/O AMBALAL MANGAL BHAI PARMAR & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR DF AMIN for Appellants
MR AJ DESAI, ADDL.PUBLIC PROSECUTOR for Respondent

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 23/11/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. Both the appellants are original accused nos. 1 and 2 of Sessions Case No. 28 of 2000 decided by the learned Additional Sessions Judge, Kheda at Nadiad on 16th November, 2000. They have preferred the present appeal under Sections 374 read with Section 386 of the Code of Criminal Procedure, challenging the legality and validity of the order of conviction and sentence on various grounds mentioned in para-3 of the memo of appeal. Both the accused have been held guilty for the charge of offences punishable under Sections 306 read with Section 114 of Indian Penal Code. For the charge of offences punishable under Section 498A of I.P.C., both the accused have been sentenced to undergo imprisonment for three years and to pay fine of Rs. 500/- and in default of payment of fine, punishment is imposed for a period of one year for the said offence. For the charge of offence punishable under Section 306 read with Section 114 of I.P.C., both the accused have been sentenced to undergo imprisonment for a period of 10 years and to pay fine of Rs. 1,000/- each and in default of payment of fine, simple imprisonment is imposed for further period of three months. Both the sentences are ordered to run concurrently. Plain reading of the operative order imposing sentence

gives an impression that while imposing punishment for default in payment of fine for the offences punishable under Section 498A of I.P.C., the learned trial Judge, instead of mentioning one month, has mentioned one year, otherwise, there could not have been lesser punishment as punishment for default in payment of fine of Rs. 1000/- imposed for the offence punishable under Section 306 read with Section 114 of I.P.C. For the sake of brevity, the appellant nos. 1 and 2 are referred in this judgment as “accused nos. 1 and 2” respectively.

2. Before adverting to the submissions made by both the sides, it would be beneficial to state the facts of the case as under.

3. Accused no. 1 is the mother-in-law of the deceased Minaben and accused no.2 is sister-in-law of the deceased and daughter of accused no.1. Marriage of deceased Minaben was solemnized before 3 years prior to the date of incident, with Laljibhai, son of the accused no.1. At the time of marriage as Laljibhai was studying, after solemnization of the marriage, he used to stay at the place of his education and the deceased Minaben used to stay at her in-laws' house with her mother-in-law, father-in-law and sister-in-law.

4. It is the case of the prosecution that the accused nos. 1 and 2 were giving ill-treatment and harassment to the deceased Minaben and were making false allegations as regards the character of the deceased alleging that she had illicit relations with her father-in-law, that is, the husband of the accused no.1 and father of accused no.2. It is also the case of the prosecution that both the accused were giving ill-treatment with an intention to drive the deceased to commit suicide. As per the case of the prosecution, with a view to achieve the said intention, on the date of the incident, that is, on 28.9.99, the accused no.2 herself played drama of committing suicide in presence of other members of the family including the deceased so that the deceased might commit suicide.

5. It is the case of the prosecution that pursuant to the aforesaid drama, the deceased Minaben committed suicide by pouring kerosene on herself and setting herself on fire at about 13.30 p.m. on 28.9.99. As per the allegation of the prosecution, pursuant to the said incident, both the accused ran away and other persons from the village removed the deceased to the hospital at Karamsad and thereafter shifted her to S.S.G. Hospital at Baroda, where, she

succumbed to her injuries on 30.9.99 at about 22.00 hrs.

6. As per the prosecution case, on 28.9.99, the deceased made a false declaration before her father, informing him that she committed suicide as she could not tolerate. The case of the prosecution is that the accused persons subjected the deceased to intentional cruelty in order to drive her to commit suicide and therefore the accused had committed the offences punishable under Sections 498A and 306 read with Section 114 of I.P.C.

7. The learned trial Judge, after examining the prosecution witnesses and hearing the parties, by judgment and order dated 16.11.2000 convicted both the accused for the offences punishable under Section 498A and Section 306 read with Section 114 of I.P.C. The learned trial Judge, by the above judgment and order held both the accused nos. 1 and 2 guilty for the charge of offence punishable under Section 498A of I.P.C., and sentenced them to undergo imprisonment for a period of 3 years and to pay fine of Rs. 500/- each and in default of payment of fine, imposed simple punishment for a further period of 1 year. The learned trial Judge also held both the accused guilty for the charge of offence

punishable under Section 306 read with Section 114 of I.P.C., and sentenced them to undergo imprisonment for 10 years and to pay fine of Rs. 1000/- and in default of payment of fine, imposed punishment for a period of three months for the said offence. Both the sentences are ordered to run concurrently.

8. Mr. D.F. Amin, learned counsel for the appellants-accused has taken us through various grounds of challenge and also through the evidence led during the course of the trial. By referring to various records and the judgment under challenge, he submitted that the finding of guilt recorded by the learned trial Judge is based on incorrect appreciation of evidence and that some apparent mistakes have been committed by the learned trial Judge in either accepting the case of the prosecution or while dealing with the arguments of the defence that were made by the defence side. Mr. Amin has made three-fold arguments; firstly he submitted that in presence of the two consistent dying declarations of the deceased, wherein, the deceased has stated that she sustained burn

injuries on whole of her body accidentally at the time when she was preparing food at her in-laws' house, the learned trial Judge has erred in holding that death of the deceased was suicidal. That none of the dying declarations speaks about cruelty and therefore, the accused were required to be acquitted ignoring other ambiguous type of evidence led by the prosecution. According to Mr. Amin, if the deceased was tortured mentally in connection with her character, then, she would have stated the facts before the P.S.I., Sojitra, who recorded her statement initially at S.S.G. Hospital, Vadodara and in her statement recorded by the Executive Magistrate, Vadodara. That normally such woman would state details of torture, at least gist of the physical or mental torture made by the in-laws. That these two dying declarations are important initial statements that have been brought by the prosecution. Non-production of the papers from the hospital at Karamsad and SSG Hospital, Vadodara, has positively helped the accused,

because, the case has taken a sharp turn after the arrival of Dy.S.P. and it emerges that the brother of the deceased, perhaps was tempted to file a complaint. It is submitted that till that time, there was no grievance either by the deceased or by her close relatives who were very well present at S.S.G. Hospital at Vadodara. It is submitted that the learned trial Judge has not correctly appreciated this crucial fact situation and that the finding of guilt recorded by the learned trial Judge is bad and cannot be sustained in the eye of law.

9. The second fold of argument of Mr. Amin is that there are number of discrepancies even in the evidence of the prosecution witnesses examined. If the dying declarations, for the sake of argument are ignored, there is no clinching evidence under which a positive conclusion could have been recorded that, there is adequate evidence as to cruelty by any of the accused to the deceased which can be said to be cruelty within the meaning of Section 498A of I.P.C. That the prosecution witnesses have made

material improvement to prove the element of cruelty and number of material things that were stated by the complainant in the FIR recorded by P.S.I., Sojitra have not been stated by the said complainant in his deposition recorded before the trial Court. The FIR cannot be read as substantive piece of evidence. The FIR can be used only for the purpose of corroboration and contradiction while evaluating the evidence of the complainant and substratum of story of the case of prosecution placed and proved by the witnesses so examined. Here, on facts, it has come on record that the deceased had a very short, that is, about three years' married life, but for half of the period, she was staying in her parental home. Evidence also shows that during this period, for the first period of one and half year, husband of the deceased was also residing at the parental home of the deceased as he was studying at Vasad. It is amply clear that prior to about one and half year, she was sent to her matrimonial home. Evidence also shows that out of this period of one and half year,

married life of the deceased was peaceful for a period of one year. Impliedly therefore, it can be said that the mother-in-law, that is, the accused no.1 and sister-in-law, that is, accused no.2 may have started impeaching the deceased about her character during the period of last six months from the date of the incident. It has come in the evidence that the accused no.2 is married lady and during the days of the incident, she had come to the house of the deceased, being her parental home as she was to deliver a child. She was staying in the house of the deceased since about one and half months and prior to the incident before some days, she had delivered a child. These facts are not controverted. Therefore, it is submitted by Mr. Amin that the learned trial Judge was supposed to look into the circumstances emerging from the totality of the evidence led by the prosecution and the infirmities and lacunas left by the investigating officer. That the prosecution cannot take advantage of the weaknesses of the defence side and as such, the

prosecution was under an obligation to bring home the charge beyond reasonable doubt by leading cogent and convincing evidence capable of linking the accused with the guilt. Material witness, that is, Lilaben, cousin sister of the deceased who was incidentally sister-in-law [Jethani] of the deceased had been declared hostile by the prosecution. Evidence that has come on record in the nature of contradiction or the answers given by this witness during the cross-examination by the Public Prosecutor when the Public Prosecutor was permitted to ask leading questions, should not be considered as reliable piece of evidence and the trial Judge was supposed to scan the evidence of this witness Lilaben, as according to the prosecution, she was present at the time when the incident had occurred. True it is, that Dineshbhai-PW 1, exh.14-brother of the deceased, who was the complainant and Leelaben-PW 4 are competent witnesses who can lead convincing evidence as to cruelty, they being close relatives, but as such, evidence of these two

witnesses does not inspire confidence. Father of the deceased, PW-2, exh.19, examined by prosecution, of course, has stated about the mental cruelty administered to the deceased by both the accused, but this witness PW 2 has made material improvement and has attempted to implicate the accused persons by evolving a theory of one oral dying declaration made before him by the deceased. Therefore, it was risky for the trial Judge to take into account the version of PW 2 even as corroborative piece of evidence to the say of the PW 1- complainant Dineshbhai and PW 4-Leelaben. According to the prosecution, the deceased was impeached and tortured that she had developed illicit relations with her father-in-law and therefore, she was giving special treatment to her father-in-law; that she was taking care of her father-in-law with utmost love and affection and this taunting was going on since then and the deceased had informed her parents and close relatives prior to the incident. That on the date of the incident, there was some quarrel on

the same issue between the deceased and the accused no.2 and the deceased committed suicide by pouring kerosene over her body from the plastic container which was there in their house. According to Mr. Amin, the prosecution is not clear as to when the deceased sustained burn injuries, whether the room or the house was bolted from inside or it was not bolted and the husband of the deceased and other relatives had opportunity to rush to the rescue of the deceased. At some place, it has come on record that the house was bolted from inside and the husband of the deceased-Laljibhai entered the house by making way through roof of the house. But none of the close relatives or neighbours, including Veljibhai or Vasantben, who claim that they had taken the deceased to the hospital, has supported the theory that the place where the deceased committed suicide was bolted from inside. Laljibhai-PW 7, husband of the deceased obviously has not supported the case of the prosecution. Panchnama of the scene of occurrence drawn by PSI, Sojitra - PW 8 also

does not state anything about the condition of the roof of the place of which he had drawn panchnama and the said panchnama is also silent in this regard. This situation makes theory of cruelty placed by the prosecution doubtful. When the evidence as to mental cruelty is found weak type of evidence, then, the accused could not have been held guilty of the charge of offence punishable under Section 498A of I.P.C. The allegation made by the prosecution appears to be an afterthought otherwise, the deceased would have stated clearly in her statement recorded by the Executive Magistrate even though the injuries on the body of the deceased were severe. But that by itself would not be sufficient to draw inference that the deceased had committed suicide on account of mental cruelty administered to her by any of the accused. According to Mr. Amin, two material witnesses, that is, the complainant and mother of the deceased have attempted to improve the story before the trial court for the first time that prior to the incident, there was quarrel

between the deceased and the accused no.2 and the accused no.2 had lifted the plastic container of kerosene and had threatened the deceased that she would commit suicide by making similar type of allegation that the deceased is having loose character and she leaves like a prostitute and because of such conduct of the accused no.2, the deceased apprehended that perhaps she may be held responsible if her sister-in-law commits suicide and therefore, the deceased poured kerosene over her body and set herself on fire. Mother and father of the deceased, that is, PW 2 and PW 3 have stated that the quarrel was picked up by the accused no.2 but the accused nos. 1 and 2, both had started the quarrel immediately prior to the incident. According to Mr. Amin, this theory is recorded in the police papers for the first time on 2nd October, that is, after lapse of 5th day, the day on which the statement of Lilaben came to be recorded. Till that date, there was nothing on record to show that there was nexus between the act of suicide and allegations

that were being allegedly made against the deceased. No independent witnesses have been examined nor the prosecution has brought out any material document. It is risky to accept the version of the witnesses examined by the prosecution including the hostile witness Lilaben for accepting the case of the prosecution that the deceased was tortured or otherwise impeached as alleged by the prosecution. When it has come in evidence that there is a big difference of age between the deceased and her father-in-law, her cousin sister who is her sister-in-law [Jethani] residing with her only could have brought this fact to the notice of the police immediately after the incident. If the story that, the quarrel had occurred on the day on which the incident occurred between the deceased and the accused would have been unfolded by her to the parents of the deceased immediately after the incident when they were there in the hospital, then, these three witnesses,that is, the complainant PW 1, PW 2 and PW 3 could have

stated this story in their respective police statement and the question of making material improvement by these three witnesses would not have arisen. As such, evidence of Vasantben and Raijibhai does not take care of the case of the prosecution further so far as the case of cruelty is concerned and even it was not possible for the learned trial Judge to say that either Vasantben or Raijibhai were independent witnesses. On the contrary, it has come on record that they belonged to one family and therefore, the accused ought not to have been held guilty of the charge of offence punishable under Section 498A of I.P.C.

10. While arguing this point, Mr. Amin has also attempted to differentiate the case of the accused nos. 1 and 2. According to Mr. Amin, evidence as to accused no. 2 Hansaben is very weak, because, Hansaben resides at her in-laws' house and prior to about one and half month of the date of the incident, she had come to reside with her parents, that is, the house of the in-laws of the deceased as she was to deliver a

child. The complainant Dineshbhai does not say anything in his deposition before the Court that the accused no.2 is also responsible for making serious allegation as to the character of the deceased. Though he has stated something in his complaint, that is, the FIR recorded by P.S.I., Sojitra, but in his deposition, he has not proved that part of the complaint. The complainant would not have missed such crucial fact while deposing before the Court if accused no.2 was really responsible for making serious allegations as to the character of the deceased. Therefore, according to Mr. Amin, the case is comparatively more weak qua the accused no.2 in reference to the charge of Section 498A of I.P.C.

11. Third fold of the argument of Mr. Amin is that if this Court is of the view that there is some evidence which can be said to be reliable piece of evidence against the accused no.1 and her conduct qua deceased and that she is responsible for mental cruelty administered to the deceased, even then, none of the accused including the

accused no.1 could have been held guilty of offence punishable under Section 306 of I.P.C., because, there is no adequate, good and convincing evidence under which a presumption provided under Section 113A of the Evidence Act could have been raised. Ultimately, presumption which can be drawn under Section 113A of the Evidence Act is under the domain of the learned trial Judge and some discretion is given to the Court and the Court should assign some good reasons as to why and in what circumstance, the learned trial Judge is inclined to raise a presumption contemplated under Section 113A of the Evidence Act. Each presumption that can be raised under the law or under the given factual circumstance is rebuttable presumption. The accused is competent to rebut the presumption raised against him. But in the present case, there is no evidence which can be said to be sufficient to raise a presumption against any of the accused though the deceased succumbed to severe burn injuries in the first 7 years of her married life. It is therefore submitted that

as such, this is not a case of physical cruelty by her husband or any of the accused. There is nothing on the record to show that when for the first time, character of the deceased was assailed seriously by any of these two accused and when there is no nexus between the alleged act of suicide, impeachment and/or allegation made against the character of the accused, it would not be safe for the Court to raise a presumption and even then, in the present case, the learned trial Judge has committed grave error in raising such presumption. While developing the argument, Mr. Amin has placed reliance on the ratio of the following three decisions:-

[1] Ramesh Kumar Vs. State of Chhattisgarh, [2001] 9 Supreme Court Cases 618.

[2] State of West Bengal Vs. Orilal Jaiswal and another [[1994] 1 Supreme Court Cases 73.

[3] Hans Raj Vs. State of Haryana [2004] 12 Supreme Court Cases 257.

12. In the case of Ramesh Kumar, reported in [2001] 9 SCC 618, the Apex Court was dealing with the case of the husband convict and on facts, the Apex Court observed that solely because the accused was found guilty under Section 498A, he should not necessarily be held guilty under Section 306 on the basis of the same evidence. Of Course, the facts are materially different in the cited decision but in para-12 of the judgment, the Apex Court has observed as under:-

> "xxx Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that [i] the woman has committed suicide, [ii] such suicide has been committed within a period of seven years from the date of her marriage, [iii] the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court *may presume* that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume" suggests. Secondly, the existence and availabiity of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before

> the presumption may be drawn the court shall have to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression -- “the other circumstances of the case” used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the factgs and circumstances otherwise available on record may destroy the presumption. The phrase “may presume” used in Section 113-A is defined in Section 4 of the Evidence Act, which says -- “Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.”

13. In another decision cited by Mr. Amin in the case of State of West Bengal [supra], facts of the said case were more grave than the case on hand so far as the evidence as to cruelty towards the deceased is concerned. In the said decision, the deceased had committed suicide by hanging in the house of her husband and the in-laws, within a year from the date of marriage. The case of the prosecution was that the marriage was a negotiated marriage and according

to the admission of the accused and other persons of the family of in-laws, sufficient dowry including colour T.V., motor cycle, gold ornaments etc. had been given at the time of marriage. The deceased was about 20 years of age and she was treated cruelly and was tortured both mentally and physically by the accused and this had started after few days of the marriage of the deceased. In the said case, the Apex Court held the accused responsible for the offences punishable under Section 498, however, held that they should be given benefit of doubt so far as the charge under Section 306 of I.P.C. was concerned. Mr. Amin has taken us through relevant paras of paras-17 and 18 of the said Judgment, which are as under:-

> “In the instant case, the learned Sessions Judge has come to the finding that the charges levelled against the accused have been proved by indicating cogent reasons therefor. We have already indicated that the learned Judges of the High Court have entertained a grave doubt about the correctness of the prosecution story for the circumstances indicated hereinbefore. We have analysed those circumstances and in our view the said grounds do not stand scrutiny and they are against the weight of the

evidence. We may add here that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing Suicide. If it transpires to the Court that a victim committing suicide was hyper-sensitive to ordinary petulance dischord and differences in domestic life quite common to the society to which the victim belonged and such petulance dischord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of Suicide should be found guilty. But in the facts and circumstances of the case, there is no material worthy of credence to hold that Usha was hyper-sensitive and that for other reasons and not on account of cruelty she had lost normal frame of mind and being overcome by unusual psychic imbalance, decided to end her life by committing suicide. The evidence adduced in the case has clearly established that Usha was subjected to abuses, humiliation and mental torture from the very beginning of her married life. Within a few days after the marriage when a newly married bride would reasonably expects love and affection from the in-laws, she was abused by the mother-in-law, the accused No. 2 by saying that the deceased was a woman of evil luck only because an elderly member in the family had died after her marriage. According to the evidence given by the mother of the deceased. the accused No. 2 even suggested that being a woman of evil luck (alakshmi) the deceased, should not live and end her life. When Usha conceived for the first time she had the misfortune of abortion. When the unfortunate daughter-in-law would reasonably expect sympathy and consolation from the

mother-in-law, the evidence in this case is that the mother-in-law abused the deceased in the hospital by telling that she was a woman of evil luck. The evidence in the case reveals an act of extreme form of cruelty by telling the unfortunate mother that she was vile enough to swallow her own baby and she should commit suicide. There is also evidence in the case that the husband used to come home drunk and abuse her and also used to assault her on occasions. The bridal presents brought by her were branded as goods of inferior quality and she was asked to take the said articles back to her parental home. Such acts, to say the least, were very unkind and a newly married woman is bound to suffer a great mental pain and humiliation. Even if we do not take into consideration the demand for further dowry gifts since the case of such demand had not been indicated in the earlier statement made by the mother which was treated as F. I. R., there is no manner of doubt that the evidence of the mother which has been accepted by the learned Sessions Judge and in our there is no reason to discard the same, clearly establishes that the deceased had been subjected to physical and mental torture all throughout. It is only unfortunate that the accused No. 1, the husband. instead of giving her solace against the humiliation and abuses hurled by the mother-in-law, either kept silent or expressed his inability to give good counselling to the mother and to protest against act of mental torture and humiliation. On the contrary, he also treated the wife with Cruelty, by telling her to take the bridal gifts back to her parental home and also by physically assaulting her. Such acts, in our view, were quite likely to destroy the normal frame of mind of the deceased and to drive her to frustration and mental agony and to end her life by committing suicide. Under explanation (a) of S. 498A, I.P.C.,

> "cruelty" means- "any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman".
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> In the aforesaid circumstances, the offence under S.498A, I.P.C. is Clearly established against both the accused. We therefore allow the appeal in part by setting aside the order of acquittal under S.498A, I.P.C. We convict both the accused namely Orilal Jaiswal and Gujarati Debi under S. 498A, I. P.C. but considering the age of accused No. 2, Gujarati Debi, we impose sentence on her to suffer rigorous Imprisonment for 2 years and a fine of Rs. 2,000/- in default to suffer further imprisonment for four months The accused No. 1 Orilal Jaiswal is sentenced to suffer rigorous imprisonment for 3 years and a fine of Rs. 2,000/ - in default to suffer further rigorous imprisonment for four months under S.498A. I.P.C. Although there are materials on record to indicate that both the accused were also guilty under S. 306, I.P.C, but we are inclined to give them benefit of doubt so far as the charge under S. 306, I. P.C. is concerned and they are acquitted of the said charge. The impugned judgment of the High Court stands altered to the above extent."

14. Here, in the present case, according to Mr. Amin, in absence of legal evidence as to the incident that had allegedly occurred immediately prior to the act of alleged suicide, the accused ought not to have been linked with the offence punishable under Section 306 read with Section

114 of I.P.C., by raising a presumption under Section 113A of the Evidence Act. Plain reading of the judgment under challenge gives an impression that as the death is within 7 years and same is found suicidal death, on appreciation of the evidence, the learned trial Judge has raised a presumption mechanically ignoring legally settled position.

15. In the third cited decision in case of Hans Raj [supra], the Apex Court, after reproducing para 15 of the judgment in the case of State of West Bengal [supra], has held as under:-

> “The allegations that the appellant did not like to keep the deceased with him because she was not good looking, or that he was addicted to liquor or that the deceased had reported these matters to her parents and others, or that the appellant intended to re-marry and had told his wife Jeeto about it, or that the deceased had once come to her father's house in an injured condition, or even the allegations regarding beatings, do not find place in the statements recorded by the police in the course of investigation. These allegations have been made at the trial for the first time. All that was alleged in the FIR or even at the stage of investigation was that there were frequent quarrels between the husband and wife, sometimes resulting in physical assault, on account of the husband being addicted to consumption of 'Bhang'. The

> other allegation that the appellant was aggrieved of the fact that his sister Naro was not being properly treated by Fateh Chand, PW-3, brother of the deceased, also appears to be untrue because there is nothing on record to show that there was any disharmony in the marital life of his sister Naro. In fact, Fateh Chand, PW-3, her husband, himself stated on oath that he was living happily with his wife Naro, sister of the appellant. On such slender evidence, therefore, we are not persuaded to invoke the presumption under Section 113-A of the Indian Evidence Act to find the appellant guilty of the offence under Section 306,I.P.C."

16. According to Mr. Amin, the accused atleast should be acquitted from the charge of offence punishable under Section 306 read with Section 114 of I.P.C.

17. Mr. Amin clarified that third fold of argument advanced by him should be treated as alternative submission made in his first fold of argument.

18. Mr. A.J. Desai, learned APP for the State strongly resisted the submissions made by Mr. Amin. According to Mr. Desai, there is adequate evidence to discard the two dying declarations produced during the course of the trial and the learned trial Jude has rightly not believed these two dying declarations. While commenting

on the merits of the evidence in the nature of dying declarations, Mr. Desai pointed out certain infirmities. The first infirmity pointed out by Mr. Desai is that because of the inefficiency of the investigating officer as he was investigating such serious offence for the first time, he has failed in producing the hospital papers from Karamsad hospital as well as S.S.G. Hospital, Vadodara. He has submitted that therefore, it is possible for the defence to argue that as these two documents perhaps were not helping the act of the PSI, Sojitra, the same were not brought before the Court, and the P.S.I., before recording the statement of deceased Minaben, ought to have approached the doctor; that it was risky for the learned trial Judge to consider the statements of Minaben as reliable piece of evidence in the nature of dying declarations within the meaning of Section 32 of the Evidence Act. It was the duty of the investigating officer to approach the doctor first and obtain his permission to record the statement and also to obtain necessary

certificate as to her mental and physical condition. Undisputedly, the deceased had sustained burn injuries at about 1.30 p.m. and she was taken to Karamsad hospital. Therefore, it can reasonably be believed that the deceased must have been treated at Karamsad hospital before being referred to S.S.G. Hospital, Vadodara. However, it has not come on record as to what type of treatment was given to the deceased. When the investigating officer himself has admitted in his deposition that when he reached the S.S.G. Hospital, Vadodara, the deceased was raising shouts. Obviously, because of the nature of injuries on her body, she must be undergoing severe pain. This investigating officer has admitted that the deceased was not answering the questions put to her lucidly and she was fumbling also. Mr. Desai has expressed surprise that how detailed statement including the reference of ward number and cot number and name of the hospital also could have been stated by the deceased in her statement made by her before the police. By pointing out to the

statement of the deceased recorded by the P.S.I., Mr. Desai has also submitted that there are erasures and over-writings in the relevant bottom part of the statement and it is very likely that these corrections have been made after the statement was recorded by the Executive Magistrate, because, in the statement, that is, the dying declaration recorded by the Executive Magistrate, he has mentioned that it is not possible to obtain any right or left hand thumb impression of the deceased, but he has taken toe [thumb] impression of the right foot. While going through the statement, the words used by P.S.I., Sojitra in the statement recorded by him are sufficient to say that this must have been written in the words of an officer and not in the exact words of the injured including the treatment given in the hospital. This officer has not even stated that who was the doctor who certified by putting his signature in the Yadi prepared by him as to physical and mental state of mind of the deceased. The evidence of P.S.I. Sojitra is

clear that initially Yadi was sent to the Executive Magistrate so that he can rush to the hospital for recording a dying declaration and thereafter he had recorded the statement of deceased Minaben. The dying declaration recorded by P.S.I., Sojitra as well as Executive Magistrate should be viewed with doubt. The learned trial Judge has rightly not believed the story emerging from the facts stated and mentioned in the said dying declarations. It is settled that when the Court finds that the dying declarations are genuine, trustworthy and the court is able to listen to the ring of truth, then, the Court should accept it as reliable piece of evidence. In normal cases, the prosecution is trying to hammer that the dying declaration should be believed but this is a case where the prosecution, from the beginning has attempted to hammer that the dying declarations recorded by P.S.I. Sojitra and the Executive Magistrate are not reliable piece of evidence and it appears that the same have been given under some emotional blackmailing or

pressure, otherwise, the deceased ought not to have attempted to exonerate all members of the family of her in-laws. There is material contradiction also as to time when she got accidental fire. In one of the statements, she has stated that meal was cooked, they had enjoyed their afternoon meal and at the time when she was preparing afternoon tea, she caught fire by flame of a brass stove which was there in the kitchen. In the second statement, it is stated that when she was cooking afternoon food, that is, the first regular meal of the day, she caught fire by the brass stove. Normally, time of 1.30 p.m. is neither time for first meal nor for the afternoon tea. True it is that each family is living in its own way and ultimately each family may have his own schedule of living. But the deponent [deceased] would not commit mistake when asked specifically that when and how she caught fire. Therefore, this conflict in both those dying declarations has emerged as material conflict. According to Mr. Desai, learned trial Judge was right in saying that

none of these two statements of the deceased, that is, statement recorded by P.S.I., Sojitra and the statement recorded by the Executive Magistrate should be accepted as reliable piece of evidence. On the contrary, circumstances speak that none of the statements were voluntary. Considering the percentage of the injury reflected in the P.M. Note and the parts of the body that were found burnt by the doctor who had performed autopsy, they corroborate the finding recorded by the learned trial Judge that a lady who has sustained such serious injuries and that too burn injuries practically on body including the inner parts, would not have stated anything in such detail to the P.S.I., and the statement recorded by the Executive Magistrate is also on the same line. By pointing out the original dying declaration produced and proved by the Executive Magistrate, Mr. Desai has submitted that this is nothing but an attempt of completing the formality whereby printed form has been filled in by the Executive Magistrate. The Executive Magistrate has not

even cared to obtain signature of the doctor who must be on duty of the Burns Ward or atleast of a Nurse attending the deceased, on the endorsement that she is conscious and she is in fit state of mind to respond to the questions asked to her. The Executive Magistrate has not even stated in his deposition that he had contacted the doctor who had made an endorsement on the Yadi received by him. P.S.I., Sojitra has also not even proved by saying in clear terms that a particular doctor was on duty and he had obtained his signature and the doctor had signed in his presence on the Yadi sent by him to the Executive Magistrate. It is therefore submitted by Mr. Desai that in all these circumstances, legitimately, the learned trial Judge has not accepted the dying declarations as reliable pieces of evidence and therefore, it is not possible for him to agree with the submission of Mr. Amin that the accused deserve acquittal on the strength of the dying declarations made by the deceased. The Court is conscious that a normal person who is

able to visualize his death would not tell a lie, even then, in a number of cases, the Courts, on circumstances and other aspects, have held that the deceased has not disclosed the true story as to injuries sustained by her and the dying declarations have been condemned and not believed by the Courts. It is submitted that this is one of such cases.

19. Another submission made by Mr. Desai is that it was the duty of the learned trial Judge to appreciate other part of the evidence and the same has been rightly appreciated. There is ample evidence to show that the deceased was tortured mentally. A young married girl aged about 19 years, if is impeached with her character and that too of having illicit relations with her father-in-law, would suffer great mental stress. In number of cases, young married females are anxious to serve their in-laws with great love and affection and it is the experience of the society that newly wed brides are visualizing their father in the respective father-in-law and therefore, in such

situation, if the deceased was treating her father-in-law, accused no.1 or any of the accused ought not to have impeached the character of the deceased. If the suspicion of the accused was genuine, then, she ought to have fired her husband, that is, father-in-law of the deceased instead of impeaching the character of the deceased. Constant torture of such nature falls within the category of “mental cruelty” defined in Section 498A of I.P.C., and therefore, the learned trial Judge has rightly stated that the deceased was tortured and subjected to cruelty. It has also come in evidence that both the accused were equally torturing the deceased for the same reason. If the prosecution witnesses were inclined to implicate any of the accused falsely, then, they would have made some exaggeration of deceased having physical torture also and number of such other allegations also could have been made. This case appears to be genuine, the prosecution witnesses have unfolded the true story of which they were aware of. When the learned trial Judge

has believed this story as genuine and satisfactorily proved, then, this finding recorded by the learned trial Judge may not be reversed and the conviction of both the accused may be confirmed for the offence punishable under Section 498A of I.P.C., as both of them have been held individually responsible for committing such offence.

20. It is also the say of Mr. Desai that there is no error in the finding recorded by the learned trial Judge either on legal or on factual basis. Undisputedly, the deceased committed suicide within 7 years of her married life and when there is sufficient evidence to show that there is torture and on the date of the incident, something had happened and something which has remained to an extent ambiguous, this Court, atleast can observe that the issue or dispute or quarrel was the same, that is, the allegations that were made against the deceased as regards her character and therefore, this Court should confirm the finding holding that the prosecution has established the nexus between

the act of suicide and mental torture that was meted out to the deceased by both the accused. Considering the scheme of Section 113A of the Indian Evidence Act, the learned trial Judge was supposed to exercise discretion. According to Mr. Desai, no error has been committed for raising a presumption against the accused. The accused have not even attempted to rebut the presumption and therefore, they have been linked with the crime under Section 306 read with Section 114 of I.P.C. When more than one witnesses have stated that prior to the incident, quarrel was picked up by both the accused and the accused no.2 was the main person in picking up the quarrel, order of conviction should be upheld and the appeal should be dismissed.

21. On careful consideration of the submissions made before us and the evidence read over to us, we are of the view that there is no evidence from the complainant Dineshbhai against the accused no.2. Undisputedly, accused no.2 had been there since last about one and half month

and she was there to deliver child. Prior to the incident, she had delivered a child and we have reason to believe that on occasions, she may have joined the accused no.1 in making allegations against the character of the deceased. But when the first cousin sister of the deceased, that is, Lilaben was also there in the house of the family and residing with the deceased and the accused persons at relevant point of time, the prosecution, according to us, could have brought better set of evidence. The police could have been informed immediately about the entire story if any serious quarrel had taken place immediately prior to the incident. There is enough force in the argument of Mr. Amin that in this regard, there is material improvement in the substratum of the story of the prosecution and the investigating officer has introduced the theory of quarrel immediately prior to the incident for the first time when the statement of Lilaben came to be recorded. When Lilaben claims that she had narrated the entire story to the parents of the

deceased, then, this fact should have come on record much earlier than 2nd October for the first time. Therefore, it is not safe for us to accept this part of the story of the prosecution which has emerged as material improvement, as reliable piece of evidence. It is also relevant to note that Lilaben has been declared hostile by the prosecution, meaning thereby, the prosecution, at relevant point of time decided not to rely upon the evidence of Lilaben and therefore only, permission was sought to declare her as a witness hostile to the prosecution. As per the settled legal position, reliable part of the evidence of hostile witness can be considered by the Court while appreciating the evidence of other witnesses examined by the prosecution. PW 1 Dineshbhai, the complainant has proved material part of the complaint and he has proved to the satisfaction of the Court that the deceased had committed suicide and the act of suicide was the result of the torture meted out to the deceased by the accused no.1. He has stated that the accused no.1 was

assailing the character of the deceased and was alleging the deceased that she was having illicit relations with her father-in-law. This part of the evidence of the complainant gets sufficient corroboration from three witnesses, that is, the mother of the deceased, father of the deceased and Vasantben. Of course, these three witnesses have stated this fact in their own way but there is consistency in the story told by these three witnesses that the deceased was tortured by the accused no.1 and she was impeached that she had illicit relations with her father-in-law. Undisputedly, Sojitra is a taluka town and according to Mr. Amin, population of the said town must be about 15000 at the relevant point of time. There is no evidence as to socio-economic status and educational background of the witnesses examined. The learned trial Judge, who has actually recorded the evidence and who must have noticed the demeanor of the witnesses, when has observed that there is some strength in the say of these witnesses as to mental torture

meted out to the deceased, then, according to us, the finding recorded by the learned trial Judge in this regard is not required to be disturbed.

22. So far as the case as to cruelty administered to the deceased by the accused no.2 is concerned. We are in agreement with the submission made by Mr. Amin that the evidence as to administration of mental cruelty by the accused no.2 is comparatively weak as nothing has been said by the complainant but it is not possible for us to say that there is no convincing evidence even to link the accused no.1 with the offence punishable under Section 498A of I.P.C. Mr. Desai has rightly submitted that if the accused no.1 was suspecting the character of her husband as well as the deceased, then, she could have scolded her husband at first instead of putting mental stress and constant torture on newly wedded daughter-in-law. Unfortunately for prosecution, husband of the deceased has turned hostile and we are conscious that contradiction brought on

the record and proved cannot be read as substantive piece of evidence. However, it is possible for this Court to legally observe that by bringing this contradiction on record, the prosecution has kept substratum of the story intact that the deceased was under constant mental stress and torture in very early part of her married life. Technically, marriage was solemnized before three years, but the deceased came to reside with her in-laws before about one and half year of the incident. In the initial first year, the deceased was not unhappy. This fact has also been admitted by the prosecution witnesses, namely, parents of the deceased. This aspect of evidence inspires confidence in the genuineness of the version of the witnesses otherwise, there would have been a blame that as the husband of the deceased was studying outside, on occasions, the deceased was exploited by her father-in-law and thereafter, the mother-in-law started torturing her. When the learned trial Judge was able to listen the ring of truth in the deposition of these

witnesses as to cruelty administered to the deceased, there is no reason for us to say that the finding of guilt recorded qua the accused no.1 is also based on improper or erroneous appreciation of evidence.

23. For not accepting the genuineness of the dying declarations, we are also inclined to accept the argument made by Mr. Desai whereby he has pointed out that the panchnama of the scene of occurrence which has been accepted in evidence by the defence side during the course of the trial speaks about many things even if the photographs taken subsequently after lapse of some days by the investigating officer are ignored. It prima facie appears that somebody prior to the drawing of the panchnama of the scene of offence had played mischief with the place otherwise, there would not have been a polythene container in the nearby area of the scene of occurrence in the very part of the house of which there is mention in the panchnama. It is referred as yellow colour container with kerosene oil along with pieces of

cloths of the deceased. These articles were found from the spot. Pieces of clothes were sent for analysis to Forensic Science Laboratory and presence of kerosene on the sample of earth where the incident had occurred has been confirmed by the FSL. This would not have so found if it was a case of some accident on account of flames coming out of the brass stove. This part of the evidence practically nullifies the genuineness of the facts stated in the dying declarations. Finding in this regard by the learend trial Judge is logical, legal and acceptable.

24. According to us, accused no.2 should be given benefit of doubt so far as the guilt of offence under Section 498A of I.P.C. is concerned. The conviction recorded by the learned trial Judge for the offences punishable under Section 498A of I.P.C. qua accused no.1 is concerned, it requires to be upheld as the same is not found either perverse or illegal.

25. So far as the offence punishable under Section 306 read with Section 114 of I.P.C. is

concerned, it is not possible for us to agree with the submissions made by Mr. Desai that there is sufficient evidence on record to raise a presumption. True it is that the Presiding Judge of the Court is given discretion to raise a presumption on available evidence led to prove cruelty, but while raising the presumption, there must be adequate and good reasons. Merely because the deceased has committed suicide within 7 years of married life on account of physical and/or mental cruelty, the presumption to link the accused with crime punishable under Section 306 of I.P.C. cannot legally be raised and it is not even safe to raise such presumption. Ratio of the decision of the Apex Court in the case of State of West Bengal [supra] clearly helps both the accused persons, more particularly, in absence of evidence as to the incident that had occurred immediately prior to the act of the suicide by the deceased. It is the duty of the prosecution to establish that such act or omission was direct cause to the act of commission of suicide. The nexus between

the two or proximity of time is held to be relevant in number of decisions and that only has been observed by the Apex Court in the decision in the case of Hans Raj [supra]. It is possible for us to refer to more number of decisions of the Hon'ble the Apex Court and some decisions of this court also in this regard, but we do not find it necessary as by now, settled law is that in absence of evidence as to nexus between the suicide and cruelty or close proximity between the torturous act or any serious omission and act of suicide, it would not be safe to raise a presumption. If legally it is possible to raise a presumption only then, the accused can be said to be under an obligation to rebut the same. According to us, on facts of the present case, legally it was not possible to raise a presumption against the accused persons merely because there was some evidence of administration of mental cruelty to the deceased. Therefore, according to us, both the accused should be given benefit of doubt so far as the offence punishable under Section 306

read with Section 114 of I.P.C. is concerned.

26. The appeal is partly allowed. The judgment and order of conviction and sentence dated 19.11.2000 passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 28 of 2000 against the accused no.1 for the offences punishable under Section 498A of I.P.C. is hereby upheld. The accused no. 2 is given benefit of doubt for the offences punishable under Section 498A of I.P.C and therefore, the judgment and order of conviction and sentence dated 19.11.2000 passed by the learned Additional Sessions Judge, Nadiad in Sessions Case No. 28 of 2000 against the accused no.2 Hansaben, wife of Chandubhai Ramabhai Parmar, for the offences punishable under Section 498A of I.P.C. is hereby quashed and set aside. Simultaneously, both the accused are given benefit of doubt for the offences punishable under Section 306 read with Section 114 of I.P.C. Therefore, judgment and order of conviction and sentence as regards accused nos. 1 and 2 so far as the offences punishable under

Sections 306 read with Section 114 of I.P.C. is concerned, the same is quashed and set aside. Thus, the accused no.2 is ordered to be acquitted for both the above offences and is ordered to be released forthwith if in prison and is not required in any other offence, otherwise her bail bond shall stand discharged.

27. According to Mr. Amin, substantive sentence imposed against the accused no.1 should be reduced as she has been imposed maximum punishment prescribed under the Act as there are no reasons to impose maximum punishment. A Court when decides to impose maximum punishment, then, it is supposed to give reasons as to why maximum punishment prescribed under the Act is being imposed. It is submitted that these reasons are missing and therefore, this Court should reduce the punishment especially when she is enjoying bail for last about 10 years and in view of the fact that at the time of incident, she was aged 47 years and by now, she must be 58 years. Normally, these aspects are not relevant, but when she is not found guilty of the charge

of offences punishable under Section 306 read with Section 114 of I.P.C., some reduction in substantive punishment can be made and we reduce the substantive punishment to period of one and half year, i.e. to eighteen months. Therefore, the substantive punishment imposed to the accused no.1 for the offences punishable under Section 498A of I.P.C. is hereby reduced to 1 and half year [1-1/2 year]. We are not inclined to reduce the amount of fine or punishment imposed in default of payment of fine by the learned trial Judge. Therefore, the amount of fine is not reduced. However, we are inclined to clarify that in default of payment of fine, the accused no.1 shall remain in prison for 1 month instead of 1 year. Therefore it is directed that in default of payment of fine, the accused no.1 shall remain in prison for 1 month instead of 1 year. As the learned trial Judge has not mentioned as to the type of punishment, we direct that the accused no.1 shall undergo simple imprisonment for a period of 1 and half year [1-1/2 year].

28. As the accused has enjoyed the bail since about 10 years, she should be given reasonable time to surrender within 4 weeks so that she can serve the sentence. Accordingly, the accused no.1 is given 4 [four] weeks' time to surrender to the trial court to serve the sentence. If the accused no.1 fails to surrender before the trial court within the period aforesaid, the trial court shall issue non-bailable warrant against the accused no.1 so that she can be sent to the prison to serve the sentence. Bail bonds as regards accused no.1 are cancelled and the bail bonds as regards accused no.2 are discharged. Order and direction accordingly.

[C.K. BUCH, J.]

[RAVI R. TRIPATHI, J.]

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